

Estate of George Green

IBIA 71-8

Decided September 2, 1971

Syllabus

Indian Probate: Children, Adopted: Right to Inherit: Child from Kin of Adoptive Parents

Under Oklahoma Uniform Adoption Act, a child adopted under prior law may inherit from relatives of adoptive parent where the person from whom inheritance is claimed dies after the date of enactment of Uniform Adoption Act.

Indian Probate: Inheriting: Generally

In general, rights of inheritance are determined by the law in effect on the date of death of the person from whom inheritance is claimed.

ESTATE OF GEORGE GREEN) Appeal from Denial of Rehearing
)
Deceased) Reversed
Otoe Allottee No. 481)
Probate H-249-66, H-204-67,) IBIA 71-8
IA-T-11; H-22-70,)
H-241-70) September 2, 1971

George Green, the decedent herein, died December 25, 1964, unmarried and without issue. He was the son of Albert Green who predeceased him in 1921. His brother, John Green, died in 1916 leaving two children, Albert Levi Green, Jr., the appellant herein, and Alice Green Masquat. A sister of the decedent, Rachel Green, died in 1941 leaving two children, George L. Kent and Eugenia Kent Brand, the present appellees.

The decedent's father, Albert Green, adopted Albert Levi Green, Jr., on November 11, 1918. Albert Levi Green, Jr., claims one-third of the estate as an adoptive brother of the decedent, whereas the Examiner held him to inherit a one-fourth share as a blood nephew.

During his lifetime, George Green had executed three wills. The last will, dated February 2, 1963, was disapproved by the Examiner, whose decision was affirmed by the Regional Solicitor in Estate of George Green, IA-T-11 (June 7, 1968). The disapproval

of that will brought earlier wills into consideration, i.e., the will of May 1, 1951, in which Olynthia Pipestem was a beneficiary, and the will of December 14, 1937, in which Albert Green III, a son of the appellant, was a beneficiary.

Following the decision in Estate of George Green, supra, the parties entered into an agreement, approved by the Examiner, under which the beneficiaries under the remaining two purported wills agreed that those wills would be disapproved in return for certain stipulated cash amounts. Under this agreement, the remainder of the estate was to be distributed to the "heirs at law" of the decedent. The only memorandum of this agreement appearing in the record is a "statement of facts" issued by Examiner Blaine on December 5, 1969. In this "statement of facts," however, the Examiner not only outlined the facts of the case and the terms of the settlement (including the provision that the remainder would be distributed to the "heirs at law"), but went on to make the following statement:

Albert Levi Green, Jr., was legally adopted by this decedent's father, Albert Green, and, thus, would also be a brother-by-adoption of this decedent. However, in the opinion of the [Examiner], Albert Levi Green, Jr., is not entitled to inherit as a "brother by adoption" under the laws of Oklahoma, thus each of these four nieces and nephews would inherit 1/4 of this estate as heirs at law. [Emphasis supplied.]

The Examiner's ruling upon the heirship question, in the context of this document explaining the settlement, introduced an ambiguity into the record as to the scope of the settlement agreement itself: Did the parties agree to the distribution of the estate to the "heirs at law" as determined by the Examiner, or was the question of heirship to be left open for further litigation?

This question cannot be answered by consideration of no more than the "statement of facts" itself. If the parties had intended to leave open the question of heirship, there would be no need to recite, as part of a memorandum of that settlement, an actual finding of heirship. Such finding would normally be a part of the Examiner's decision in the case after any necessary arguments or briefing by the parties. On the other hand, if the agreement included a stipulation as to the shares to be taken by the heirs at law, the Examiner could have so stated in his description of the agreement. Also, in this situation, it would be incorrect to state that the parties had agreed that the remainder of the estate should be distributed to the "heirs at law," because the actual agreement would have been to a specified division--namely, one-fourth to each of the blood nieces and nephews.

The appellees contend that the appellant is "estopped" from claiming heirship as an adopted brother of the decedent because of the agreement. This argument is apparently based on the theory that the agreement included the parties' consent to the heirship findings of the Examiner. The appellees also contend that, in any event, the Examiner's finding was correct under Oklahoma law and should not be disturbed. For reasons discussed below, we disagree with both of these contentions.

On January 20, 1970, Examiner Blaine issued an order captioned as follows: "Order Disapproving Wills and Determining Heirs at Law." In this order, the Examiner did in fact determine the heirship question based on a detailed discussion of the merits of the issue under Oklahoma law. In light of Examiner Blaine's ruling on the merits of the heirship issue, it appears that the agreement of the parties was understood by the Examiner as having left this issue open to further consideration. Since the Examiner was directly involved in the case at the time of the parties' settlement discussions and agreement, his understanding of that agreement is accorded substantial weight by the Board. Furthermore, the parties, both on petition for rehearing and in this appeal, have placed primary emphasis on the merits of the heirship issue.

In this situation, we hold that the appellant is not barred by virtue of the agreement from pressing his claim as to the extent of his proper share of the estate as an "heir at law" of the decedent.

Section 60.16(1) of the Uniform Adoption Act (10 O.S. 1961, §§ 60.1 et seq.), which became effective in Oklahoma in 1957, provides as follows:

After the final decree of adoption is entered, the relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes. [Emphasis supplied.]

The underscored language in the above quotation makes it particularly clear that, if this statute applies to the instant case, the appellant would inherit as a brother of the decedent. Under the statute in effect prior to 1957, he would not.

In his order denying appellant's petition for rehearing, the Examiner ruled that under the holding of Conville v. Bakke, 400 P.2d 179 (Okla. 1965), appellant could not take as the decedent's adopted brother because the adoptive parent died before the present Oklahoma adoption statute was enacted. We believe that this holding misconstrues the Conville case and the trend of the law of Oklahoma generally as it relates to adoption.

In the Conville case, the question before the Court was the intent of the testator in specifying that a portion of his estate should be awarded to the "heirs" of a named person, which heirs were to be determined at the time of the death of that person. Specifically, the question presented was whether the testator would be presumed to have acted with the knowledge that the laws of adoption or descent and distribution were subject to change, and with the intent that such amended laws might be followed in the distribution of his estate. It was held that, absent evidence tending to "show [that the] testator intended to exclude" adopted children from participating as his heirs, no such intention would be presumed. Conville v. Bakke, *supra* at 191.

The court then went on to discuss the extent to which the Uniform Adoption Act expanded the rights of persons adopted under previous (repealed) statutes, stating:

Had the Legislature intended the Act to operate prospectively only and keep the old law in effect as to persons adopted prior to August 27, 1957, this could have been accomplished by inclusion of an exception limiting the rights of those adopted under the repealed statutes. [*Id.* at 193.]

In the same paragraph, the court "decline[d] to ascribe" an intention to create two systems of inheritance for adopted children, depending on the date of adoption,

to an act of the Legislature which plainly evidenced acceptance of the modern, liberal considerations of public policy toward the status of adopted children. . . . A construction must be adopted which permits uniform operation of the statute.

Acceptance of the appellees' position in the present case would indeed create "two systems of inheritance" for adopted children, a result which would be in direct opposition to the policy expressed by the court in Conville.

The Examiner's order also cites Annot., 18 A.L.R.2d 960, 962 (1951), and the authorities contained therein, as supporting the proposition that the statute "in force on the date of the death of the adoptive parent . . . is controlling" for purposes of inheritance. (Emphasis supplied.) We believe, however, that the authorities cited in this annotation actually establish the rule that the controlling date, for purposes of inheritance, is the date of death "of the person from whom inheritance is claimed." Brooks Bank & Trust Co. v. Rorabacher, 118 Conn. 202, 207, 171 A. 655, 657 (1934) (Emphasis supplied). As was explained in Gatchell v. Curtis, 134 Me. 302, 306-07, 186 A. 669, 671 (1936) (dictum):

A decree of adoption entered in accordance with power conferred by statute fixes the status of the child; it divests the natural parents of control and establishes the rights and obligations of the foster parents. It does not settle for all time the child's right to inherit property. That remains as in the case of all persons subject to legislative regulation, until it becomes vested by the

death of him whose estate may be subject to administration.

The only Oklahoma cases we find which would indicate any restriction on the full family status of adopted children under the Uniform Adoption Act involve the interpretation of the meaning of words such as "issue of [the] body" in a will. See, e.g., Moore v. McAlester, 428 P.2d 266 (Okla. 1967). Other Oklahoma cases indicating limited inheritance rights for adopted children are inapplicable, since they relate either to testamentary intent or to previous (now repealed) statutes of descent and distribution. E.g., Hein v. Hein, 431 P.2d 316 (Okla. 1967); Noble v. Noble, 205 Okla. 91, 235 P.2d 670 (1951); In re Ware's Estate, 348 P.2d 176 (Okla. 1958). Recognizing that the issue presented in this appeal has not been squarely confronted by the Supreme Court of Oklahoma, we also note the recommendation contained in Note, Symposium on Domestic Relations: Adoption, 14 Okla. L. Rev. 353, 358 (1961), that if the present problem should arise, the Court should "grant the adopted child a right of inheritance to the estate of his adoptive parent's relative regardless of when he was adopted."

Under the authority delegated to the Board of Indian Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is REVERSED, and REMANDED to the Examiner

for such further action as may be necessary to implement this decision. The decision is final for the Department.

David J. McKee, Chairman
Board of Indian Appeals

I concur:

James M. Day, Ex Officio Member

Dated: September 2, 1971